

# **INTER-MUNICIPAL AGREEMENT**

**for advancement of**

**The Assabet River Rail Trail (ARRT)**

**By and Between the:**

**TOWN OF HUDSON, CITY OF MARLBOROUGH,  
TOWN OF STOW,  
TOWN OF MAYNARD, and TOWN OF ACTON**

## **TABLE OF CONTENTS**

RECITALS.....	4
ARTICLE 1 – ORGANIZATION.....	6
1.1 FORMATION OF COMMITTEE .....	6
1.2 ACCESS TO RECORDS: .....	7
1.3 SUB COMMITTEES: .....	7
1.4 CONTRACTS: .....	7
1.5 TIME-LINE: .....	7
ARTICLE 2 – FINANCIAL ARRANGMENTS.....	8
2.1 APPORTIONMENT OF COSTS: .....	8
2.2 CHANGE ORDERS: .....	8
2.3 ADMINISTRATIVE COSTS:.....	8
ARTICLE 3 – INVOICING.....	9
ARTICLE 4 - TERM / PURPOSE / INTENT.....	10
4.1 TERM: .....	10
4.2 AMENDMENT:.....	10
4.3 ASSIGNMENT:.....	11
4.4 FORCE MAJEURE: .....	11
4.5 REPORTS AND RECORDS: .....	11
4.6 REMEDIES:.....	11
4.7 EMERGENCIES:.....	13
4.8 MEMBER(S) EMPLOYEES:.....	13
4.9 FINANCING ARRANGEMENTS:.....	13
4.10 FUTURE FUNDING AND APPROPRIATIONS:.....	13
4.11 PERFORMANCE BONDS OF OFFICIALS:.....	13
4.12 SEVERABILITY:.....	14
SIGNATORS: .....	14

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2000, and executed in duplicate (each executed copy constituting an original) by and among the Town of Hudson (hereinafter referred to as "HUDSON"), a Massachusetts municipal corporation with a principal place of business at the Town Hall, 78 Main Street, Hudson, MA 01749, acting by and through its Board of Selectmen; the City of Marlborough (hereinafter referred to as "MARLBOROUGH"), a Massachusetts municipal corporation with a principal place of business at City Hall, 140 Main Street, Marlborough, MA 01752, acting by and through its Mayor; the Town of Stow (hereinafter referred to as "STOW"), a Massachusetts municipal corporation with a principal place of business at 380 Great Road, Stow, MA 01775-1122, acting by and through its Board of Selectmen; the Town of Maynard (hereinafter referred to as "MAYNARD"), a Massachusetts municipal corporation with a principal place of business at the Town Building, 195 Main Street, Maynard, MA 01754, acting by and through its Board of Selectmen; the Town of Acton (hereinafter referred to as "ACTON"), a Massachusetts municipal corporation with a principal place of business at 472 Main Street, Acton, MA 01720, acting by and through its Board of Selectmen, with no personal liability to the aforementioned public officials; all five (5) MEMBERS (each also referred to herein as "MEMBER") are collectively known for the below purposes as the ARRT STEERING COMMITTEE (hereinafter referred to as the "COMMITTEE").

## RECITALS

WHEREAS, Chapter 40, Section 4A of the General Laws allows the Chief Executive Officer of cities, towns, and boards to enter into agreements with one or more other MEMBERS to perform jointly activities or undertakings which any of the contracting members is authorized by law to perform; and

WHEREAS, said Chapter 40, Section 4A sets forth requirements for and parameters of such "inter-municipal agreements"; and

WHEREAS, the five (5) MEMBERS in this Agreement (hereafter referred to as "Agreement") have each authorized participation in the Agreement and have each authorized or will authorize the appropriation of and/or the borrowing of its share of the costs of the activities to be undertaken under the Agreement (see EXHIBIT A – Local Authorizations); and

WHEREAS, the MEMBERS are endeavoring collectively to create a multi-modal bike and pedestrian trail, known locally as the Assabet River Rail Trail, traversing through all five communities, a length of approximately 12.5 miles, to be located primarily upon the former Marlborough Branch Rail Road Right of Way (ROW), where said ROW is available; and

WHEREAS, the MEMBERS have applied or will apply collaboratively for various Local, State and or Federal funding to permit the acquisition of ROW, advancement of design, and construction of the trail; and

WHEREAS, the MEMBERS have voluntarily agreed to form the COMMITTEE, to work jointly to advance this project; and

WHEREAS, in Fiscal Year 1998, the MEMBERS collectively submitted a successful application to the Executive Office of Transportation and Construction for Mass. Transportation Enhancement Funding through the Federal Intermodal Surface Transportation Efficiency Act (ISTEA) resulting in Mass. Highway Department (MHD) Agreement number 8946 for ROW acquisition and MHD Agreement number 8426 for design (both Agreements are attached hereto as EXHIBIT B); and

WHEREAS, in the case of the existing Inter-Municipal Agreement, by and between the Town of Hudson and the City of Marlborough, originally made in June of 1998 and further amended December 20, 1999 for the purpose of utilizing ARRT design funds obtained through the above noted FY98 Mass. Enhancement Fund, this new Agreement is intended to supplement and not supersede that earlier Agreement (Exhibit C); and

WHEREAS, in June of 2000, the MEMBERS each agreed to fund the ARRT Planning Project Services contract in the amount of \$2,000 per community, which was advertised in a newspaper of general circulation and resulted in the submission of one proposal by the firm of EarthTech, Inc. with a principal place of business in Concord, Massachusetts; and subsequent to the signing of this AGREEMENT, and with approval of the COMMITTEE, a contract with Earth Tech, Inc. will be signed by the Town of Hudson, a draft of which contract is attached hereto as EXHIBIT D; and

WHEREAS, all other collaborative ARRT related grant projects and contracts besides those noted in the above paragraphs have heretofore been substantially completed: and

WHEREAS, it is the intent of the MEMBERS to proceed in an expeditious manner to utilize funding already obtained for the ARRT project and to continue to seek and apply for additional funding as may be appropriate; and

WHEREAS, the COMMITTEE members agree that they will designate HUDSON to be the lead MEMBER to streamline the administration of the existing above noted contracts and RFP;

NOW, THEREFORE, the MEMBERS, in consideration of the above, and the mutual benefits to be derived by the parties hereto, pursuant to the authority contained in M.G.L. Chapter 40, Section 4A, do hereby mutually agree as follows:

## **ARTICLE 1 – ORGANIZATION**

### ***1.1 FORMATION OF COMMITTEE***

There is hereby created an Assabet River Rail Trail Steering Committee (hereinafter referred to as the “Committee”) to manage and control activities required in the implementation of the ARRT.

The COMMITTEE shall consist of five (5) voting members, with one individual appointed by each MEMBER community by the Chief Elected Officials of said MEMBER community, and one (1) non-voting advisory member designated by the Assabet River Rail Trail, Inc., a duly formed Massachusetts entity, incorporated on July 11, 2000 in accordance with MGL Chapter 180, created for the promotion and implementation of the ARRT, having a principal place of business in Marlboro, c/o Duncan Power, Clerk, 246 Essex Street, Marlborough, MA 01752.

Any two members of the COMMITTEE may call a meeting of the committee with reasonable advance notice given. Official actions of the Committee shall require a majority vote of a quorum of voting members.

The COMMITTEE members shall annually select a chairman, and a vice chairman/clerk from among its members. The non-voting advisory member may serve in the capacity of vice chairman and or clerk.

The COMMITTEE members shall serve for the life of this AGREEMENT without compensation and shall only be replaced by the action of the Chief Elected Officials of the appropriate MEMBER community who are authorized to appoint and or replace members.

The COMMITTEE shall designate a “management community” to be the clearinghouse for and to handle the general day-to-day affairs of the COMMITTEE. Said “management community” shall initially be HUDSON. By vote of the COMMITTEE, as warranted when the ARRT project progresses to later and different stages, the “management community” can be changed by majority vote of a quorum of members. Until such time as Hudson no longer serves as the “management community” all official COMMITTEE action reports, correspondence, invoices and other communications are to be directed to and/or through:

ARRT c/o Office of the Executive Assistant, Attention: Michelle Ciccolo  
Town of Hudson, Town Hall, 78 Main Street  
Hudson, MA 01749  
Telephone: (978) 562-9963, Facsimile: (978) 562-9641  
Email: Michelle\_Ciccolo@mma.org

The COMMITTEE shall also designate a "lead community" for each and every contract to be entered into by the ARRT MEMBER communities. HUDSON shall act as the "lead community" as contracting authority for the herein referenced contracts (MHD #'s 8946, 8426, & Project Planning) and contract related correspondence and documents should be directed to the above address. It is not inconsistent with this policy that a different MEMBER community may be elected to serve as "lead community" for future ARRT related contracts. By majority vote a quorum of the COMMITTEE, all future grant applications and ARRT related projects shall have designated at time of execution of a new application a "lead community" for the particular contract which shall result from said grant or other funding; and any agreements made by and between the MEMBERS, during the process of the funding submission, shall be clearly detailed as to scope and budget and appended to this AGREEMENT as future EXHIBITS.

#### ***1.2 ACCESS TO RECORDS:***

The COMMITTEE and HUDSON, as lead community, shall keep a written, permanent record of its official proceedings, shall at all times keep full and accurate financial records which shall be open at appropriate times to inspection by its members and by auditors so designated and by the Commonwealth.

#### ***1.3 SUB COMMITTEES:***

The COMMITTEE may from time-to-time create sub-committees for any purpose as it deems appropriate in the further advancement of the ARRT.

#### ***1.4 CONTRACTS:***

The COMMITTEE may enter into and/or cause to be entered into contracts for professional and other services as is necessary to further advance the purposes of the ARRT, provided that, for any contract requiring a municipal appropriation, final approval be obtained from the participating MEMBERS. The Management Community will provide a copy of all ARRT related contracts to each participating MEMBER.

#### ***1.5 TIME-LINE:***

A project "time line" will be created by the COMMITTEE and may be amended from as needed. The "time line" is intended to serve as a guide to the individual MEMBERS for planning of any local approvals and or appropriations that may be required to advance the project. Once completed, said "time line" and any future modifications shall be presented to the MEMBERS for approval.

## **ARTICLE 2 – FINANCIAL ARRANGEMENTS**

### ***2.1 APPORTIONMENT OF COSTS:***

Individual MEMBER communities shall, at their sole discretion, determine their level of participation, if any, in future ARRT grant or otherwise funded projects. Financial commitments made by individual MEMBERS prior to the date of this AGREEMENT for the existing above noted contracts shall be honored. EXHIBIT E contains an outline of the heretofore requested funding and agreed upon local community match required for the FY98 Mass. Transportation Enhancement Application, now known as Agreement numbers 8946 and 8426. All future grant applications and other projects requiring financial contributions by participating MEMBER communities, made and duly authorized by the appropriate MEMBER, shall be honored throughout the completion of that phase of the project.

### ***2.2 CHANGE ORDERS:***

Based on the nature of the work to be undertaken and the unknowns of the ROW acquisition, design, and development process, parties acknowledge it is conceivable that less work and/or work beyond the envisioned scopes of work identified may have to be undertaken in deviation of initially established budget outlines. The COMMITTEE shall be responsible to evaluate any proposed changes and make recommendations to the MEMBER communities for final approval. Any change proposed by the COMMITTEE which shall require an alteration to a MEMBER community's financial appropriation and/or authority to borrow shall also require written approval, prior to the execution of said change, by the contracting authority of the affected MEMBER community. Change orders pertaining to non-substantive matters that will not impact financial appropriations may be approved by the Chief Administrative Officer of the affected MEMBER community.

### ***2.3 ADMINISTRATIVE COSTS:***

If it becomes necessary in the future, MEMBER communities may be asked to contribute a nominal amount of money to cover administrative and other paper-work related costs. Unless otherwise voted by the COMMITTEE, said nominal costs shall be split in equal shares among the voting members and authorized by the MEMBER communities in advance of any expenditure of funds. It is also agreed that the individual community costs, such as administration and legal expenses, incurred outside of the scope of this AGREEMENT, specific to the needs of any one particular member, will be borne solely by that MEMBER.



### **ARTICLE 3 – INVOICING**

INVOICING for the three primary contracts known as MHD # 8946 & 8426, and the ARRT PROJECT PLANNING SERVICES will be conducted in the following fashion. FOR MHD # 8426 (DESIGN), all invoices will be submitted to and paid by the Town of Hudson which will then submit requests for reimbursement to MHD.

For MHD # 8946 (ROW ACQUISITION), MEMBERS shall give a minimum of thirty days notice to the Town of HUDSON of a scheduled real estate closing date. Prior to the ROW land transfer, Hudson will arrange a check for payment to be presented to the real estate seller on the date of the closing. Hudson will then apply for reimbursement from MHD. Any costs anticipated and agreed to by the purchasing MEMBER community which are in excess of the reimbursable amount, shall be the responsibility of the purchasing community. All legal work required as a part of the real estate transfer are the responsibility of the individual MEMBER community. If for any reason and through no fault of the Town of Hudson, MHD does not approve a reimbursement request for ROW land purchased by another MEMBER community, that purchasing MEMBER community shall be responsible for full reimbursement of costs to the Town of Hudson.

For the ARRT PROJECT PLANNING SERVICES contract, each MEMBER community will forward to the Town of Hudson two thousand dollars (\$2,000) and all invoices will be submitted to and paid by Hudson out of said funds.

If the COMMITTEE determines that it is necessary to request funds for administrative costs, a set amount will be established and approved by the MEMBER communities. That amount will then be forwarded by the MEMBERS to Town of Hudson which will use those funds directly to pay project related invoices. HUDSON shall disburse funds in a timely manner upon presentation of valid invoices for expenses and contract related work.

## **ARTICLE 4 - TERM / PURPOSE / INTENT**

The parties intend that the MEMBERS entering into this Agreement are the sole and exclusive beneficiaries of the Agreement, subject to the terms and limits of this Agreement and of applicable state and federal law. This Agreement shall not take effect until it has been executed by all five (5) participating MEMBERS.

### **4.1 TERM:**

The term of this Agreement shall be for a period of seven (7) years from the date hereof, unless sooner terminated or extended, as herein provided. F

This agreement may be terminated by any member or any member may withdraw upon sixty (60) days written notice to the remaining members and through no fault of the terminating party pursuant to Massachusetts General Laws Chapter 40, Section 4A, as amended. To the extent applicable, the remaining members shall be reimbursed for all services and expenses rendered to the date of termination plus reasonable termination charges.

### **4.2 AMENDMENT:**

No officer, official, agent, or employee of any of the participating MEMBERS shall have the power to amend, modify or alter this AGREEMENT or waive any of its provisions or to bind any of the participating members by making any promise or representation not contained herein, except by an authorized written amendment requiring a majority vote of all voting MEMBERS. Said amendment shall be executed in the same manner as this AGREEMENT is executed.

No participating MEMBER may rely on any conduct, statements, action, inaction or course of conduct of the employees, agents or officers of any other participating unit as having changed, modified or amended this AGREEMENT.

No MEMBER shall be construed as waiving any provision of the Agreement unless the waiver is executed in writing as an amendment to this Agreement. No waiver by any unit of any default or breach shall constitute a waiver of any subsequent default or breach. Forbearance or indulgence in any form or manner by any unit shall not be construed as waiver of any term or condition hereto nor shall it limit the legal or equitable remedies available to that MEMBER.

#### **4.3 ASSIGNMENT:**

This Agreement shall not be assigned or transferred by any participating MEMBER, without the express written consent of the other MEMBERS given with the same formalities as are required for the execution of this AGREEMENT.

#### **4.4 FORCE MAJEURE:**

No failure or delay in performance shall be deemed to be a breach of this Agreement when such failure or delay is occasioned by or due to any Act of God, strike, war, riot, epidemic, explosion, sabotage, the binding order of any court or government authority provided such order shall not be as the result of the neglect or conduct of any one MEMBER, or any other cause whether of the kind herein enumerated or otherwise not within the reasonable control of the MEMBER against whom a breach is alleged. All MEMBERS agree to exercise all diligent and good faith efforts to remedy such failure or delay at the earliest possible time.

#### **4.5 REPORTS AND RECORDS:**

Annually, during the first week of August, the Committee shall cause to have prepared an accurate and comprehensive project progress report and financial statement of transactions occurring, including but not limited to, services performed and costs recorded, through the immediate past June 30<sup>th</sup> issued to all the members. Each MEMBER shall notify the other MEMBERS in writing and keep the other MEMBERS informed of the changed names and titles of its official or officials responsible for the implementation of the terms of this AGREEMENT.

Additionally, performance of a regular yearly audit as to such records shall be effectuated with a copy of such audit being forwarded to each member immediately upon completion.

#### **4.6 REMEDIES:**

In addition to the remedies, power and authority which each MEMBER has at law or under its ordinances or by-laws, the following remedies apply:

If any participating MEMBER fails to fulfill any material obligation or condition of this Agreement, the other MEMBERS shall have the right to suspend the participation of the offending MEMBER by giving sixty (60) days notice, in writing, of their intent to do so. Upon receipt of such notice the MEMBER shall have the right to prevent suspension by curing the default within thirty (30) days or by undertaking the cure within such time and diligently and continuously pursuing such cure to completion or within any additional time which may be granted, in writing, to the defaulting MEMBER.

Suspension shall not release any of the MEMBERS from their obligation to pay all bills

or sums due prior to suspension or direction caused by such suspensions in accordance with this AGREEMENT.

All MEMBERS reserve the right, either in law or equity, by suit, and complaint in the nature of specific performance, or other proceeding, to enforce or compel performance of any or all covenants herein.

If any administrative board, commission or division of the state or federal government or any court materially impairs, alters, restricts or limits, directly or indirectly any MEMBER's rights, powers or authority to perform under this AGREEMENT, and such governmental action was not the result of any omission or action by that MEMBER, it may suspend its participation in this AGREEMENT by giving sixty (60) days written notice to the other MEMBERS. Any suspension under this clause shall not release said MEMBER from its obligation to pay any sums due and all bills owed for service previously rendered unless to do so would be in violation of a final administrative or judicial decree, order or ruling. The notice of suspension shall be given within five (5) business days after the MEMBER receives written notice of the action of decision of such agency, board, commission, division or court. It is the intent of this notice provision to give the other MEMBERS as much advance notice as possible consistent with their needs. Each MEMBER shall notify the other MEMBERS of the formal institution of any proceeding or the issuance of any formal order which impairs, restricts or limits, directly or indirectly its rights, powers or authority so that the other MEMBERS may, if they choose, participate in such proceedings or challenge any such order. At the conclusion of any such proceedings or challenge, including all appeals, any MEMBER may alter or terminate its participation in this Agreement in compliance or accordance with any final decision or ruling, after first meeting with the other MEMBERS to negotiate over amendments, if any, which could eliminate the need for such alteration or termination. Each MEMBER will at all times use its best effort to defend its right to act under this AGREEMENT before such administrative board, commission, division or court.

If any MEMBER fails to perform any obligation under this AGREEMENT, the other MEMBERS may perform on behalf of the defaulting MEMBER and charge the reasonable costs thereof, including administrative time, to the defaulting MEMBER as a

sum due under the AGREEMENT provided prior written notice has been given to the defaulting MEMBER allowing it a reasonable time to cure the default.

The remedies set forth in this AGREEMENT are separate and cumulative. The election of one does not preclude use of another.

#### ***4.7 EMERGENCIES:***

Each MEMBER shall immediately, within not more than twenty four (24) hours, notify the other MEMBER of any emergency or condition which may affect its participation in or the carrying out of its responsibilities under this AGREEMENT.

#### ***4.8 MEMBER(S) EMPLOYEES:***

Employees, servants, or agents of any of the MEMBERS shall not be deemed to be agents, servants or employees of any other MEMBER or the COMMITTEE for any purpose including, but not limited to, either Workers' Compensation or unemployment insurance purposes.

#### ***4.9 FINANCING ARRANGEMENTS:***

HUDSON will provide all MEMBERS with any information available to it as such is necessary to enable said MEMBERS to borrow or appropriate the funds needed to meet any obligations under this AGREEMENT, and to take any other actions required to provided timely financing of any project related costs.

#### ***4.10 FUTURE FUNDING AND APPROPRIATIONS:***

As may be required, and upon official vote of participation made by the chief elected official of the MEMBER for participation in future funding rounds, each MEMBER agrees to insert an article in its then next Annual or Special Town Meeting Warrant, a loan order on its City Council Agenda, or a Board order on its Board Meeting agenda, as is appropriate, and affirmatively recommend to Town Meeting, City Council or Board action that it appropriate sufficient money and/or authorize the borrowing of money to pay for its obligations under this AGREEMENT, or future amendments, and to take any of the actions annually or more frequently as required to ensure compliance with its obligations under this AGREEMENT.

#### ***4.11 PERFORMANCE BONDS OF OFFICIALS:***

Pursuant to the provisions of Massachusetts General Laws Chapter 40, Section 4A, as amended, the parties hereto reserve the right to require of all officials representing members as to this AGREEMENT, a performance bond to insure compliance with this AGREEMENT.

**4.12 SEVERABILITY:**

If any provision, section, phrase or word contained herein is determined by a court of competent jurisdiction to be unenforceable , for any reason, or beyond the scope of the statutory provisions of Chapter 40, Section 4, then it is the intention of the parties that, for public good purposes, the remaining provisions hereof continue in full force and effect.

**SIGNATORS:**

The responsibilities taken on by HUDSON under this AGREEMENT are voluntary and for the common goals of the ARRT advancement and in no way does this agreement relieve HUDSON, MARLBOROUGH, MAYNARD, STOW, and ACTON from their individual and joint legal obligations under Massachusetts General Laws or other laws or regulations as may be applicable.

IN WITNESS WHEREOF, the MEMBERS have caused their proper representatives on the day and year first above written to execute this AGREEMENT:

**TOWN OF HUDSON**

By its Board of Selectmen:

DATE:

Gregory Macloski  
Cynthia J. Pura  
Mark J. King  
[Signature]  
[Signature]

8/28/00

[Signature]

WITNESS

**TOWN OF STOW**

By its Board of Selectmen:

DATE:

9/12/00

Gregory D. Jones

Edward Perry

John L. Russell

John Clay Jr

Catherine A. Diamond

WITNESS



**TOWN OF MAYNARD**

By its Board of Selectmen:

DATE:

Steven F. Mulh

9/26/00

Anne Claire C. Desmarais

Mark R. Wesley

Frank Ignachuk

Edward Gaudin

Libby Gist

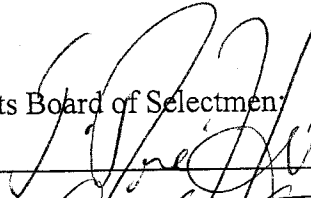

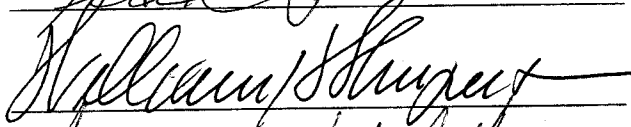
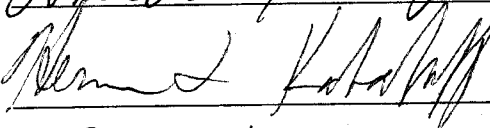
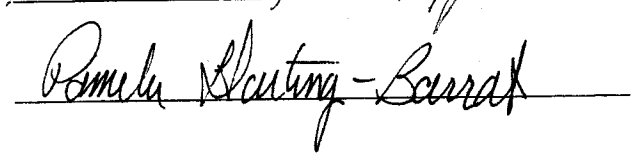
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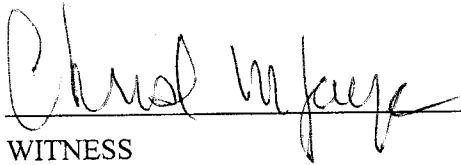
**TOWN OF ACTON**

By its Board of Selectmen

DATE:

26 September 2000

  
WITNESS

**CITY OF MARLBOROUGH, By its MAYOR:**

*William Mauro*

William Mauro

*11-16-02*

DATE

*Diane C. Halper*

Witness